

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

<b>M.B., et al.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:21-CV-317</b>
	)	
<b>GOVERNOR BILL LEE, et al.</b>	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF FILING EXEMPTION REPORT UNDER SEAL**

Knox County Board of Education (“KCBOE”) submits this notice that filed contemporaneous with this notice is the required monthly report of mask exemptions within KCBOE. Defendant KCBOE has been ordered to file a monthly report with the Court “in which it identifies the number of exemptions it grants every month for students, employees, and visitors; the full names of the exempted individuals; and the specific reasons for their exemptions.” [Doc. 48, PageID #: 1047].

KCBOE’s first mask exemption report is being filed under seal contemporaneously herewith. By way of summary, three hundred and forty (340) students have been granted mask exemptions and ten (10) staff have been granted a mask exemption.<sup>1</sup>

Additionally, pursuant to the exemption framework permitted by the court,<sup>2</sup> twenty-one (21) staff members will not be using a face mask/face shield *while* translating or providing

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<sup>1</sup> KCBOE would note that all ten (10) of the staff mask exemptions are actually in the form of mask breaks, face shields or the use of clear barriers/social distancing to allow for the staff member to remove his/her face mask. Additionally, 18 of the student mask exemptions are in the form of mask breaks or use of face shields instead of a face mask.

<sup>2</sup> Specifically, Exception 3, which allows for the removal of face masks/face shields on a case-by-case basis for instructional/other needs.

instruction in American Sign Language (“ASL”) to hearing impaired students.<sup>3</sup> Likewise, sixty-five (65) KCBOE Speech/Language Pathologists will utilize face shields and social distancing while providing small group explicit instruction for speech sound disorders which require modeling of oral structures and during individualized speech/language evaluations.<sup>4</sup>

Similarly, in accordance with exception number three, permitting exemptions or exceptions to meet “instructional need” or “other activity,” KCBOE is allowing active student performers and athletes to be unmasked during their performances, dress rehearsals and/or actively engaged in athletics (meaning competing in or practicing the sport, but not extending to sitting on the bench). The participating students will wear a mask, before, after and until they are actively engaging in the activity.<sup>5</sup> This practice is in line with mask policies followed by other

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<sup>3</sup> ASL actively requires the use of facial expressions and when translating. Speakers need to be able to freely and actively touch their faces (or close to their faces) for certain signs and even the use of face shields can disrupt this communication.

<sup>4</sup> KCBOE is unsure if the Court wanted partial mask accommodations to be listed, but as these staff will *consistently* be either utilizing face shields or removing face coverings entirely for portions of the school day, KCBOE included them as a separate page of the report.

<sup>5</sup> KCBOE is planning to provide the following guidance to its schools:

The following pertains to any and all indoor extracurricular activities:

**Athletics: (Basketball, Wrestling, Swimming, Indoor practices due to inclement weather, etc...)**

Students who are actively engaged in an indoor athletics may be unmasked while actively playing. Participants will replace their mask once they are no longer actively engaged. Coaches are expected to remain masked unless they need to drop their mask *for a moment* to communicate. All other staff and student managers will be masked. Spectators at sporting events are expected to be masked until otherwise notified.

**Performing Arts: (Band, Choral Music, Orchestra, Theater, etc...)**

Students who are actively engaged in an indoor performing arts activity (practice or production) may be unmasked while actively performing, rehearsing, practicing, or playing. Participants will replace their mask once they are no

Tennessee school districts. For instance, the mask mandate imposed by Shelby County, Tennessee specifically exempts persons who are “engaged in other activities that require removal of a mask, such as during cardio activities or athletics, grooming activities, or while performing in a theatre production.”<sup>6</sup>

KCBOE believes that the above practices are in compliance with the Court’s mask mandate but will of course follow any Court directives if the Court determines otherwise.<sup>7</sup>

Respectfully submitted,

s/David M. Sanders  
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longer actively engaged. While actively conducting, directors may remove their masks so that the performers can see facial expressions for direction. All other staff, students, backstage crews, etc. will be masked. The audience attending performances is expected to be masked until otherwise notified.

**Other Extra-curricular Activities:**

Students and staff who are engaged in indoor extracurricular activities such as club meetings, dances, social events, etc... are expected to be masked until otherwise notified.

*When in doubt, please reach out to grade level directors or supervisors and ask for clarification.*

<sup>6</sup>See Shelby County Public Health Order 26, Pg. 5. Found at: <https://www.shelbytnhealth.com/DocumentCenter/View/2350/Health-Order-No-26> (last visited October 28, 2021).

<sup>7</sup> KCBOE has relayed the above information to Counsel for Plaintiffs and Counsel would not say if they agreed or disagreed with above practice. Plaintiffs assert that it is a more complex issue than it appears and referenced the American Academy of Pediatrics guidance regarding COVID-19 and athletics. That guidance can be found at the following website: <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-interim-guidance-return-to-sports/> (last visited October 28, 2021).

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on the date recorded by the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular United States Mail, postage prepaid. Parties may access this filing through the Court's electronic filing system.

s/David M. Sanders

David M. Sanders